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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
)

CC Docket No. 94-0128

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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REPLY COMMENTS OF COMMONWEALTH LONG DISTANCE

Commonwealth Long Distance ("CLD"), a reseller of long distance telephone services, by its undersigned attorneys, hereby submits its reply comments in the above-captioned proceeding.^{1/} CLD urges the Federal Communications Commission ("Commission") to adopt reasonable requirements for Primary Interexchange Carrier ("PIC") changes which will take into account the effect such rules will have on small and mid-sized interexchange carriers ("IXCs") as well as on the future of interexchange telephone competition.

INTRODUCTION

CLD respectfully encourages the Commission to reject several of the proposed revisions to the PIC change rules that could eliminate some of the most effective and reasonable IXC marketing practices. Although the majority of commenters agree that PIC change rules should require that carriers communicate clearly with their customers and avoid misleading marketing techniques, many commenting parties express their concerns that overly restrictive PIC change rules could unnecessarily impede legitimate IXC marketing practices. In addition, CLD joins

^{1/} These Reply Comments are accompanied by a Motion to Accept Late Filed Reply Comments, wherein CLD establishes good cause for acceptance of this filing.

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a number of parties in urging the Commission to preempt conflicting state PIC change regulations.

DISCUSSION

I. THE COMMISSION SHOULD SUPPORT RULES THAT PROMOTE CLARITY WITHOUT INHIBITING IXC MARKETING FLEXIBILITY

CLD concurs with the MIDCOM Communications, Inc. ("MIDCOM"), Telecommunications Resellers Association ("TRA") and Touch 1, Inc. and Touch 1 Communications, Inc. (collectively "Touch 1") that in an industry in which one carrier holds a 60 percent market share and three carriers control more than 85 percent of the market, any limitations on IXC marketing practices should be carefully considered because of the inordinate impact on small and mid-sized carriers. Midcom Comments at 10; TRA Comments at 12; Touch 1 Comments at 7. Accordingly, CLD believes that the Commission must afford IXCs substantial marketing flexibility so that smaller carriers may compete effectively against the established carriers who possess substantial market share.

As a number of parties correctly point out, in the prior proceedings the Commission has sought to facilitate the marketing efforts of IXCs while maintaining the consumer protection goals embodied in primary interexchange carrier ("PIC") change rules.^{2/} *See, e.g.,* Competitive Telecommunications Association ("CompTel") Comments at 3; MIDCOM Comments at 4; TRA

^{2/} *See Policies and Rules Concerning Changing Long Distance Carriers*, 7 FCC Rcd. 1038 (1992), *recon. denied*, 8 FCC Rcd. 3215 (1993) (Commission stated that "[in] considering the advisability of imposing requirements on carriers of all sizes, we seek to benefit consumers without unreasonably burdening competition in the interexchange market."); *Illinois Citizens Utility Board Petition for Rulemaking*, 2 FCC Rcd 1726 (1987) (Commission stated that its intent in a prior proceeding was to "clearly facilitate the IXCs' marketing efforts while maintaining the protection embodied in the letter of agency requirement.").

Comments at 5-6. CLD believes that the Commission should continue to follow this policy so that smaller IXCs can continue to compete fairly and effectively in the interexchange market. Accordingly, CLD joins a number of commenters in their support for Sections 64.1150 (d) and (e) because they are sufficiently tailored to protect consumers without limiting legitimate IXC marketing practices. CompTel Comments at 2; Allnet Communications Services, Inc. ("Allnet") Comments at 3; AT&T Corp. ("AT&T") Comments at 12; Sprint Communications Company ("Sprint") Comments at 1. These sections eliminate deceptive marketing practices and consumer confusion by prohibiting "negative-option" LOAs (Section 64.1150 (e)) and by requiring that Letters of Agency ("LOAs") be clear, legible, and unambiguous (Section 64.1150 (d)). The Commission should limit LOA rules regarding content to prohibiting negative option LOAs, determining allowable font and point size used in LOAs, and that the person signing the LOA is an authorized representative.

II. PROPOSED RULES INHIBIT LEGITIMATE MARKETING EFFORTS

CLD concurs with the views of a number of smaller IXCs, IXC resellers, and representative associations that other than regulations prohibiting negative option LOAs, assuring appropriate font size and ensuring that the signatures are authorized, the proposed regulations will disproportionately burden smaller carriers. *See* TRA Comments at 5; ACTA Comments at 3-4; Home Owners Long Distance ("HOLD") Comments at 2-3; One Call Communications, Inc. ("One Call") Comments at 3; Touch 1 Comments at 1; Midcom Comments at 1. A number of commenting parties, *inter alia*, AT&T, MCI Telecommunications Corporation ("MCI"), Sprint, Touch 1, Operator Services Company ("OSC"), America's Carriers Telecommunications Association ("ACTA"), and CompTel share CLD's concern that other aspects of the proposed

PIC change rules will be negative and anti-competitive impact on the IXC industry. As TRA correctly pointed out, "any limitation on marketing obviously inures to the benefit of large, established providers with substantial market share." TRA Comments at 12. Accordingly, CLD joins a number of parties in opposing certain LOA provisions requiring that they be mailed separate from any inducements. Similarly, CLD opposes the application of telemarketing rules to customer-initiated PIC changes involving "800" calls.

A. LOA Separate from Inducements

CLD joins a number of parties in their criticism that Sections 64.1150 (c) (an LOA must not be combined with inducements of any kind) unnecessarily interfere with legitimate marketing efforts without providing concomitant benefits of preventing customer confusion. *See, e.g.*, ACTA Comments at 2; One Call Comments at 3; TRA Comments at 12. CLD urges the Commission to heed the warnings of many of the commenters that the this provision will unduly handicap small and medium sized IXCs by raising their administrative costs and restricting their ability to use marketing inducements to attract customers from the three dominant IXCs. See ACTA Comments at 2; HOLD Comments at 2; One Call Comments at 3; TRA Comments at 12. HOLD perceptively observes that the smaller IXCs "simply do not have the huge advertising budgets of the larger carriers." HOLD Comments at 2.

CLD believes that the proposed rule is overbroad and would serve to inhibit innovative marketing techniques that are necessary for commercial success in a marketplace where smaller carriers operate under precariously small profit margins. These nondominant IXCs must have the ability to offer their customers a new variety of creative service packages in order to remain competitively and economically viable. One Call Comments at 7; TRA Comments at 12. The

very existence of many smaller IXC's may depend upon whether the Commission decides to impose this burdensome section. For example, the Telecommunications Company of America ("TELCAM") and One Call correctly recognize that even minimal increases in marketing costs can jeopardize a small IXC's ability to stay in business. TELCAM Comments at 2; One Call Comments at 3.^{3/}

B. Regulation of "800" Number PIC Change Calls

CLD joins the majority of comments in urging the Commission to refrain from applying its telemarketing rules to customer-initiated PIC changes accomplished through "800" numbers. As numerous commenters correctly conclude, there is no current need to regulate this area. AT&T Comments at 22; One Call Comments at 12; Sprint Comments at 14; Touch 1 Comments at 8; GTE Service Corporation Comments at 5; LDDS Communications, Inc. ("LDDS") Comments at 6. CLD concurs that there is no evidence of abuse and thus joins commenters in urging the Commission to continue permitting consumers to change IXC's by calling an 800 number. Indeed, CLD notes that "800" calls are a legitimate and valuable marketing tool, provided the numbers are not designated to mislead the consumer.

III. THE COMMISSION SHOULD CONSIDER ADOPTING OTHER RULES THAT WILL HELP REDUCE SLAMMING ALLEGATIONS

CLD believes that the Commission can further reduce slamming allegations by adopting additional provisions. As OSC and ACTA perceptively recommend, the Commission should require local exchange carriers ("LECs") to provide billing account name/authorized individuals

^{3/} TELCAM calculates that this requirement alone will require it to increase rates four percent. Again, these burdensome rules will only serve to increase consumer prices and reduce the ability of smaller IXC's to compete with larger carriers. ACTA Comments at 2.

to IXC's. OSC Comments at 6; ACTA Comments at 10-11. CLD agrees with OSC and ACTA that unwanted PIC changes could be greatly reduced if such information were made available to IXC's at a reasonable price. *Id.*

Moreover, CLD concurs with ACTA that the Commission should require LECs to assign resellers unique carrier identification codes ("CIC"). ACTA Comments at 9. If resellers had their own CICs, a great deal of customer confusion and complaints would be eliminated. Presently, LECs often provide consumers incorrect information because only the underlying carrier's CIC is listed with the LEC.

CLD also supports LDDS' suggestion that carriers responsible for improper PIC changes should be responsible for paying all charges related with the unauthorized PIC changes. LDDS Comments at 7. CLD believes that this course of action holds IXC's fully accountable for their actions, and deters deceptive practices.

IV. THE COMMISSION SHOULD PREEMPT INCONSISTENT AND BURDENSOME STATE REGULATION REGARDING PIC CHANGES

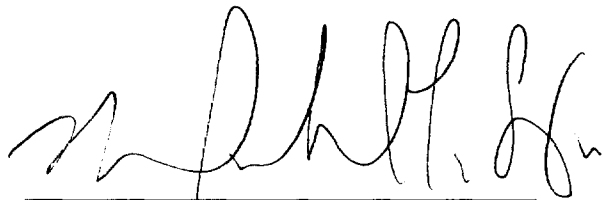
CLD urges the Commission to follow the recommendation of a number of commenters by clarifying its rules and preempting any inconsistent state PIC change rules. Sprint Comments at 4; LDDS Comments at 2-3; ACTA Comments at 11-13; CompTel Comments at 10-13. As LDDS correctly observes, a consistent PIC-change policy nationwide would prevent a patchwork of potentially inconsistent state rules and regulations. LDDS Comments at 3. CLD submits that the development of such a regulatory scheme threatens to impose substantial compliance burdens upon both large and small IXC's. For example, Sprint notes that if the Commission does not preempt inconsistent state regulations, carriers providing services in multiple states may be required to have separate LOAs for each state. Sprint Comments at 4. Furthermore, smaller

IXCs will be unable to sustain the costs of nationwide compliance and will be forced to curtail their operations. CLD, therefore, respectfully requests that the Commission preempt any inconsistent regulations proposed by states.

CONCLUSION

For the foregoing reasons Commonwealth Long Distance respectfully urges the Commission to revise its proposed PIC change rules as described herein. This course of action will protect consumers and promote a vibrant and competitive interexchange market.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Phyllis A. Whitten", written over a horizontal line.

Phyllis A. Whitten
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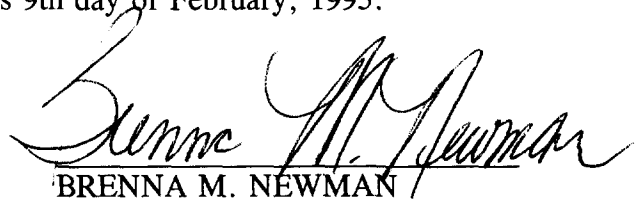
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February 9, 1995

CERTIFICATE OF SERVICE

I, Brenna M. Newman, hereby certify that a copy of the foregoing Reply Comments has been sent by United States First Class Mail, postage prepaid, unless otherwise noted, to all parties listed in the foregoing Reply Comments on this 9th day of February, 1995.


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